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Amendment No. 1 to SB3839

Henry
Signature of Sponsor

AMEND Senate Bill No. 3839 House Bill No. 3469*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following as a new part 29:

§67-4-2901. This part shall be known and may be cited as the "County Powers Relief Act."

§67-4-2902. The purpose of this part is to authorize counties to levy a privilege tax on persons and entities engaged in the residential development of property in order to provide a county with an additional source of funding to defray the cost of providing school facilities to meet the needs of the citizens of the county as a result of population growth.

§67-4-2903. As used in this part, unless the context otherwise requires:

(1) "Building" means any structure built for the support, shelter, or enclosure of persons, chattels, or movable property of any kind; the term includes a mobile home. "Building" does not mean any structures used primarily for agricultural purposes.

(2) "Building permit" means a permit for development issued in the county, whether by a county, metropolitan or municipal government.

(3) "Capital improvement program" means a proposed schedule of future capital projects, listed in order of construction priority, together with cost estimates and the anticipated means of financing each project requiring the expenditure of public funds, over and above the annual local government operating expenses, for the purchase, construction, or replacement of physical assets.

(4) "County" means a county or metropolitan government.

(5) “County school facilities privilege tax” means a tax on new residential development as defined herein.

(6) "Development" means the construction, building, erection, or improvement to land by providing a new building or structure which provides floor area for residential use.

(7) "Dwelling unit" means a room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease on a daily, weekly, monthly or longer basis; physically separated from any other room, rooms or dwelling units which may be in the same building; and containing independent cooking and sleeping facilities.

(8) "Floor area" for residential development means the total of the gross horizontal area of all floors, including basements, cellars, or attics, which is heated or air-conditioned living space.

(9) "Governing body" means the county legislative body or metropolitan council.

(10) "Person" means any individual, firm, partnership, limited liability company, joint-venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and the plural as well as the singular number.

(11) "Place of worship" means that portion of a building, owned by a religious institution which has property tax exempt status, which is used for worship services and related functions; provided however, that a place of worship does not include buildings and portions of buildings which are used for purposes other than worship and related functions or which are intended to be leased, rented or used by persons who do not have a tax exempt status.

(12) "Public building" means a building owned by the state of Tennessee or any agency or political subdivision of the state of Tennessee, including, but not limited to, counties, metropolitan governments, municipalities, school districts or special districts, or the federal government or any agency thereof.

(13) "Residential" means the development of any property for a dwelling unit or units.

§67-4-2904. Engaging in the act of residential development within a county, except as excluded by this part, is declared to be a privilege upon which a county, by resolution or ordinance of its governing body, may levy a tax subject to the conditions and limitations contained in this part. Such resolution or ordinance shall be adopted by a two-thirds vote (2/3) of the entire membership of the county legislative body at two (2) consecutive, regularly scheduled meetings.

§67-4-2905. After levying the tax, the county governing body shall, by resolution or ordinance adopted by majority vote, adopt administrative guidelines, procedures, regulations and forms necessary to properly implement, administer and enforce the provisions of this part.

§67-4-2906. This part shall not apply to development of:

(1) Public buildings;

(2) Places of worship;

(3) Barns or other outbuildings used for agricultural purposes;

(4) Replacement buildings or structures for previously existing buildings and structures destroyed by fire or other disaster;

(5) A building or structure owned by a nonprofit corporation which is a qualified 501(c)(3) corporation under the federal Internal Revenue Code, as amended; or

(6) A building or structure located in any census tract of the county that has been designated by the federal government as being eligible for

federal incentives because of blight, economic distress or urban renewal, upon a proper finding by the county legislative body that said exemption is necessary to stimulate growth in these economically challenged areas.

§67-4-2907. A governing body is prohibited from levying a tax pursuant to this part unless the county meets one (1) or more of the following criteria:

(a) The county experienced a growth rate of twenty percent (20%) or more in total population from the 1990 federal census to the 2000 federal census, or the county experiences growth of twenty percent (20%) or more between any subsequent federal decennial censuses; or

(b) The county experienced a nine percent (9%) or more increase in population over the period from the year 2000 to 2004 or over a subsequent four (4) year period according to U.S. Census Bureau population estimates.

§67-4-2908. For the exercise of the privilege of development, a county may levy a tax based upon the floor area of residential development. A county initially levying a tax under the authority granted by this part may levy such tax at a rate not to exceed one dollar ($1.00) per square foot on residential property. Whenever a county has levied a tax pursuant to this part or increased the rate of the tax as provided below, it may not increase the rate of such tax or levy an additional tax on the privilege of development for a period of four (4) years from the effective date of the tax or rate increase. After four (4) years from the date the county initially levies the tax or from the date of the last increase in the rate of the tax, the county legislative body may increase the rate of the tax by a percentage not to exceed ten percent (10%).

§67-4-2909. A governing body shall not levy a tax pursuant to this part unless it has adopted a capital improvement program. The adopted capital improvement program may be amended by the governing body.

§67-4-2910.

(a) Any tax levied pursuant to this part shall be collected in the following manner:

(1) At the time of application for a building permit for residential development, the municipal or county official issuing the permit shall compute the estimated tax liability for the county school facilities privilege tax, based upon the proposed square footage of the facility to be built and the current rate of the county's school facilities privilege tax. As a condition of receiving the permit, the applicant shall sign a form indicating that the applicant recognizes the liability for the tax. The official shall keep one (1) copy of the form for his or her records and shall provide a copy to the applicant. If the permit is issued by a municipal building official, such official shall also forward a copy of the form within thirty (30) days of the issuance of the building permit to the county official or employee who has been designated by the county legislative body to collect such tax. As an alternative, the county and any municipality within the county may provide by interlocal agreement for the municipal building official to be designated as a collector of the tax and provide for a commission to be paid to the municipality for such services.

(2) The tax shall not be due until the earlier of one (1) year from the date of issuance of the building permit or thirty (30) days after the first transfer of title to the property being developed after the building permit is issued. If, after one (1) year from issuance of the building permit, the building or structure is not complete or title has not been transferred, the permit holder may, in lieu of paying the tax, request an extension for one (1) year. The permit holder may request a maximum of two (2) extensions. Such

extensions shall not be denied if the permit holder makes a showing to the official responsible for collecting the tax that the building or structure is not complete.

(3) Once it becomes due, the tax shall be paid to the official or officials designated by the county governing body to collect the tax. At the time of payment, the official shall review the tax liability to determine whether the square footage of the completed building or structure corresponds to the initial estimated square footage in the building permit. The tax shall be computed using the actual square footage of the completed building or structure, but the rate of the tax shall be based upon the rate applicable at the time the permit was issued.

(4) The revenue from the tax shall be paid over to the county trustee within thirty (30) days for deposit in accordance with §67-4-2911.

(b)

(1) If the tax is not paid by a permit holder within ninety (90) days of the due date, the official responsible for collection of the tax shall report this delinquency to the county's delinquent tax attorney. The delinquent tax attorney shall bring an action against the permit holder for the full amount of the tax plus statutory interest and a penalty of fifty percent (50%) of the amount of tax owed. The compensation of the delinquent tax attorney for such services shall be determined by agreement between the county trustee and the delinquent tax attorney.

(2) No permit holder who owes delinquent school facilities taxes shall be eligible to receive a building permit for any other

project in the county until such time as the delinquency, plus and penalties and interest, are paid in full.

§67-4-2911. The taxes collected pursuant to this act shall be remitted by the collector to the county or metropolitan government trustee who shall place such tax proceeds in such fund or funds as designated by the governing body, but such tax proceeds shall be used exclusively for the purpose of funding capital expenditures for education, including the retirement of bonded indebtedness, the need for which is reasonably related to population growth.

§67-4-2912. Any county or metropolitan government levying a tax pursuant to this part shall provide by resolution or ordinance a procedure whereby any person aggrieved by the decision of any responsible official in administering this tax may obtain review of the official's decision administratively. The result of the administrative decision shall be subject to judicial review in accordance with law.

§67-4-2913. After the effective date of this act, no county shall be authorized to enact an impact fee on development or a local real estate transfer tax by private or public act. In addition, this part shall be the exclusive authority for local governments to adopt any new or additional adequate facilities taxes on development. However, the provisions of this part shall not be construed to prevent a municipality or county from exercising any authority to levy or collect similar development taxes or impact fees granted by a private act that was in effect prior to the effective date of this act. A county levying a development tax or impact fee by private act on the effective date of this act shall be prohibited from using the authority provided in this part so long as the private act is in effect.

SECTION 2. Tennessee Code Annotated, Section 67-4-409(a), is amended by deleting the language ", for state purposes only,".

SECTION 3. Tennessee Code Annotated, Section 67-4-409, is amended by adding the following as an additional subsection:

( ) One-half of the portion of the tax levied by subsection (a) which is not designated for a state fund by this section shall be allocated and distributed monthly to the county in which it was collected, for deposit and use for education purposes, including both new and existing debt service for school buildings or other school capital projects, the language in §67-4-401 notwithstanding. However, nothing in this section shall be construed as authorizing a county realty transfer tax in addition to the state realty transfer tax. Any local real estate transfer tax by any local governmental entity is expressly prohibited. The provisions of this subsection authorizing distribution of a portion of the revenue from the real estate transfer tax to county governments shall only apply in a county that has a population in excess of five hundred thousand (500,000) according to the 2000 federal census or any subsequent federal census and, for the fiscal year ending June 30, 2006, or any subsequent fiscal year, the county has levied a combined property tax rate for all funds in excess of four dollars ($4.00) per one hundred dollars ($100) of assessed value and has net bonded indebtedness in excess of one billion dollars ($1,000,000,000). For a metropolitan government, the property tax rate considered for the purpose of this subsection shall be the combined general services district and urban services district tax rate. If any county receiving funds under this subsection becomes eligible, pursuant to the provisions of Title 67, Chapter 4, Part 29, to levy a school facilities tax and passes a resolution to levy such tax, then the distributions of revenue from the real estate transfer tax provided for in this section shall cease upon the effective date of such tax levy.

SECTION 4. Sections 2 and 3 of this act shall take effect on July 1, 2006, and the other sections of this act shall take effect upon becoming a law, the public welfare requiring it. Provided however, Sections 2 and 3 of this act shall take effect only to the extent that the actual collection of taxes by the commissioner of revenue benefiting the general fund shall exceed the revenue required to fund the budget of the general fund for the fiscal year beginning July 1, 2006, as enacted pursuant to the General Appropriations Act. A determination of the adequacy of the revenue collections pursuant to this section shall be made, not less than quarterly, by the state funding board. To the extent that actual revenue collections are not sufficient to fully implement the provisions of Sections 2 and 3 of this act, it is the legislative intent that the funding board shall certify the extent to which actual revenue collections will permit the implementation of these provisions. In such circumstances, the tax levied by §67-4-409(a) shall continue to be allocated as it was immediately prior to this act to the extent necessary to achieve the total level of revenue required to fund the budget of the general fund for the fiscal year beginning July 1, 2006, with the excess allocated to counties as provided in section 3 of this act.